UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION-INDUSTRY PENSION FUND, an employee benefit plan; and JOHN A. WAGNER and ANTHONY M. PERRONE, in their capacities as Plan Trustees,

Plaintiffs,

vs.

Civil Action No. 1:16-cv-11116

LADUE MARKET, INC.,

Defendant.

COMPLAINT

The United Food and Commercial Workers International Union-Industry Pension Fund and two of the National Fund's Trustees, Walter B. Blake and Anthony M. Perrone, by their attorneys, for their complaint against defendant Ladue Market, Inc. ("Ladue Market"), assert as follows:

1. This is an action by an employee benefit plan and its representative Trustees to collect delinquent contribution amounts owed to the National Fund and to compel defendant to make appropriate contributions, as required by defendant's collective bargaining agreement, the governing documents for the Fund, and the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq. ("ERISA").

PARTIES

2. The United Food & Commercial Workers International Union-Industry Pension Fund (the "National Fund") is an "employee benefit plan" within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and is established and maintained pursuant to

Section 302(c)(5) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186(c)(5). The Fund is a multi-employer plan under ERISA §§ 3(2), 3(37) and 4001(a)(3), 29 U.S. C. §§ 1002(2), 1002(37) and 1301(a)(3). The National Fund is administered in Mokena, Illinois. The National Fund is administered by a joint Board of Trustees, composed equally of representatives of employers and employees, which serves as "Plan Sponsor" and "Administrator" of the Fund within the meaning of ERISA § 3(16), 29 U.S.C. § 1002(16).

3. Plaintiffs John A. Wagner and Anthony M. Perrone serve on the Board of Trustees for the National Fund and are representative Trustees of the National Fund. Mr. Wagner and Mr. Perrone each are "fiduciaries" with respect to the National Fund within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

4. Ladue Market, upon information and belief, is a Missouri corporation with offices and facilities in St. Louis, Missouri. Its registered agent for service of process is Jerry G. Myers, 9155 Clayton Road, St. Louis, Missouri. Ladue Market is a participating employer in the National Fund and is subject to the United Food & Commercial Workers International Union-Industry Pension Fund Trust Agreement ("Trust Agreement").

JURISDICTION AND VENUE

5. The Court has jurisdiction to hear this matter pursuant to ERISA §§ 502 and 515, 29 U.S.C. §§ 1132 and 1145.

6. Venue is proper in this Court under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Fund is administered in this district and the breaches giving rise to this action took place in this district.

BACKGROUND

7. Defendant has been a party to collective bargaining agreements (the "Agreement") at all relevant times in question with the United Food and Commercial Workers Union Local No. 88.

8. The Agreement requires defendant to contribute specific monthly amounts to the National Fund in consideration of pension benefits provided by the National Fund to defendant's employees. Specifically, Section 17.1 of the June 15, 2014 - June 14, 2017 Agreement requires defendant to contribute to the National Fund $131.89 per payment period for each Meat Department Manager, Journeymen Meat Cutter, Service Meat Department Journeyman, Apprentice Meat Cutter, Deli/Seafood Department Manager, Delicatessen Department Manager, Seafood Department Manager and Assistant Department Manager who is paid at least 80 hours per payment period and $0.44 per hour for all hours paid with a maximum of 40 hours per week for all Meat Clerks, Deli Clerks, Seafood Clerks, Deli/Seafood Clerks and Clean-up employees hired after June 15, 2002, who have attained the age of 21 years.

9. Defendant is a party to and bound by the Trust Agreement. Section 8.1 of the National Fund's Trust Agreement obligates the defendant to make timely contribution payments to the National Fund as required by the Agreement.

10. In accordance with Section 7.6(q) of the Trust Agreement, the Defendant was selected for routine desktop audit to determine if the employer has properly reported contributions to the National Fund. It was discovered that the Defendant has failed to make timely payment of the required contributions on behalf of employee David Whiteman for the work months of April 2011 through June 2016.

11. When the National Fund became aware of defendant's delinquencies, it notified defendant that it was required to make contributions owed on behalf of its employees pursuant to the Agreement and Trust Agreement. It is estimated that delinquent contributions of at least $8,749.94 for the work months of April 2011 through June 2016 remain unpaid.

12. Despite demands that defendant its statutory and contractual obligations, the National Fund has ascertained that said defendant has wholly failed, neglected, omitted and refused to make those payments.

13. Section 8.3(a) of the Trust Agreement authorizes the Trustees to establish rules and regulations establishing reasonable interest and liquidated damages to be added to delinquent contributions. Interest that has accrued as a result of the known late payment of contributions is $1,306.79.

14. Pursuant to Section 8.3 of the Trust Agreement, the Trustees have prescribed rules governing delinquencies which provide that the National Fund's recovery rights include the recovery of all costs and reasonable attorney's fees. In pertinent part, the National Fund's rules provide as follows:

> If legal counsel files a lawsuit to collect the delinquency, the delinquent employer shall also be liable for the following:
>
> (a) Interest on the unpaid contributions [charged at 2% above the prime rate as of the Interest Rate Determination Date along with a service charge];
>
> (b) Liquidated damages of 20% (or such higher percentage as may be permitted under federal or state law) of the delinquency; and
>
> (c) All costs of recovery, including, but not limited to, attorney's fees and costs of the action.

COUNT I: VIOLATION OF ERISA SECTION 515

15. Plaintiffs reallege and incorporate Paragraphs 1 through 14, above, as if fully set forth herein.

16. ERISA § 515, 29 U.S.C. § 1145 provides that "[e]very employer who is obligated to make contributions to a multi-employer plan . . . under the terms of a collectively bargained agreement shall . . . make such contributions in accordance with the terms of . . . such agreement."

17. Despite repeated requests by the National Fund, the Defendant has failed and refused to contribute in a timely manner all of the amounts required by the Agreement and by the Trust Agreement. Specifically, the Defendant has failed to make required contributions

on a timely basis to the National Fund for covered services rendered by the Defendant's employee for the periods set forth in paragraph 10 herein.

18. After applying credit for overage, the National Fund estimates that the Defendant owes at least $10,056.73 in delinquent contributions and interest, plus a still to be determined amount in liquidated damages.

19. As a result of its failure to make timely contributions in accordance with the Agreement, the Defendant has violated ERISA § 515, 29 U.S.C. § 1145.

20. ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2), requires that, upon entry of judgment in favor of the National Fund to enforce ERISA § 515, the Court shall award the National Fund interest on the delinquent contributions, liquidated damages, and attorneys' fees and costs incurred by the National Fund in recovering the delinquent payments.

COUNT II: BREACH OF TRUST AGREEMENT RULES (DELINQUENCY)

21. Plaintiffs reallege and incorporate the allegations of Paragraphs 1 through 20, above, as if set forth fully herein.

22. As a result of its failure to make contributions in accordance with the Agreement, the Defendant has violated the terms of the Trust Agreement.

23. Based upon the Trust Agreement's and the National Fund's delinquency rules, the Defendant is liable to the National Fund for delinquent interest, liquidated damages, payroll audit costs, and the expenses of collection incurred by the National Fund, including attorneys' fees and costs.

WHEREFORE, the Plaintiffs request judgment:

A. Awarding the National Fund delinquent contributions owed by the Defendant pursuant to ERISA § 515, 29 U.S.C. § 1145, and pursuant to the terms of the Trust Agreement and the National Fund's delinquency rules;

B. Awarding the National Fund interest and liquidated damages pursuant to ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2), and pursuant to the terms of the Trust Agreement and the National Fund's delinquency rules;

C. Awarding the National Fund expenses of collection incurred, including awarding the National Fund an amount equal to attorneys' fees and costs of this action;

D. Requiring the Defendant henceforth to contribute to the National Fund in a timely manner and as required by the Agreement, the Trust Agreement, and the National Fund's rules; and

E. Awarding such other and further equitable and legal relief as the Court shall deem appropriate.

Dated this 6th day of December 2016.

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